(42)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A...63/.... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

CORAM: **HON'BLE MR. L.C. BHADOO &**
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.63 OF 2003

APPELLANT (In jail) — Pravin @ Ballu Banjari, son of Shiv Shanker Banjari, aged about 36 years, Occupation Driver, resident fo Satti Bazar, Fawara Ke Pass, Raipur (C.G.)

Versus

RESPONDENT — State of Chhattisgarh, through the District Magistrate, Raipur (C.G.)

Present : Mr. Shashank Rathore, Advocate for the appellant.
Mr. Sudhir Bajpayee, Dy. Government Advocate for the State.

ORAL JUDGMENT

(Passed on 15TH March, 2007)

Following oral order of the Court was passed by **L.C. Bhadoo, J**:

This appeal is directed against the judgment of conviction and order of sentence dated 24th December, 2002 passed by the 8th Additional Sessions Judge (Fast Track Court), Raipur in Sessions Trial No.181/99 whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C, for committing murder of his wife Priya alias Vandana,

P.T.O.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for one month.

The case of the prosecution, in brief, is that Priya alias Vandana (since deceased) was married to accused/appellant herein in the year 1993, the accused/appellant & Priya alias Vandana along with other family members were residing in a triple storied house situated at Satti Bazar, Raipur. On 16.1.1999 at about 6.30 a.m. Shivshankar, father of accused, as usual, woke up and asked the other family members to wake up, on which the accused also came down out of his room, whereas, his wife did not come, upon which Shivshankar, his another son Vikas and daughter Madhuri went to the room of Priya and saw that Priya was lying on the bed in a pool of blood. On seeing this, the family members have started crying. Shivshankar asked his son Vikas to report the matter in the police station. Vikas went to the Police Station Kotwali, Raipur and lodged the First Information Report (Ex.P-5). The Station House Officer after registering the case for commission of offence under Section 302 of the IPC, left for the scene of occurrence and after giving notice to the Panchas prepared the inquest (Ex.P-2) on the body of Priya alias Vandana. He also prepared the site plan (Ex.P-3) of the place of occurrence. Weapon of offence, Katari (dagger) was seized by the Investigating Officer under Ex.P-6. Dead body of Priya

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

alias Vandana was sent for postmortem examination to Maikhara Hospital, Raipur under Ex.P-7, where Dr. Arvind Neralwar (PW-3) conducted postmortem examination and prepared the report Ex.P-8. The doctor opined that cause of death was syncope due to shock & haemorrhage and the death was homicidal in nature. Katari (dagger) was sent to the Assistant Surgeon, Maikhara Hospital, Raipur for his opinion and he gave his opinion (Ex.P-9) to the effect that injuries found on the body of Priya alias Vandana could be caused by the Katari in question. Investigating Officer seized the blood stained clothes i.e. one pillow white in colour, one blanket, one cotton bed sheet and two bed sheets of handloom. One diary was seized under Ex.P-15 from Pandurang.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Raipur, who in turn committed the case to learned Sessions Judge, Raipur from where learned 8th Additional Sessions Judge has received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined sixteen witnesses. Statement of accused/appellant was recorded under Section 313 of the Cr.P.C. in which he has stated that in the fateful night he was not at the residence, as he has gone to Bilaspur because his taxi was hired by one party of Bilaspur. When he returned in the morning, he saw the dead body of his wife and after seeing the dead body he

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was taken aback and started crying. Golden jewelries, which Priya alias Vandana was wearing, were missing. He examined one Durgacharan in his defence to the effect that during the marriage there was no dispute regarding demand of dowry.

After hearing learned counsel for respective parties and perusal of the record, learned Additional Sessions Judge convicted and sentenced the accused/appellant, as aforementioned.

We have heard Mr. Shashank Rathore, counsel for the accused/appellant and Mr. Sudhir Bajpayee, Dy. Govt. Advocate for the State.

Homicidal death of Priya alias Vandana has not been disputed by learned counsel for the appellant. Moreover, the doctor (PW-3), who conducted the postmortem on the body of Priya alias Vandana, has stated that he noticed following injuries on the body of Priya alias Vandana:

1. One stab wound in the size of 6x4 cm on the right side of chest in the mid line about 1 cm.
2. One stab wound in the size of 4x1.5 cm on the chest at cavity on the left side between the ribs.
3. One stab wound in the size of 4x1.5 cm which was 1.5 cm below the injury No.2.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4. Second rib of right side and third rib of left side were fractured and there was a cut in the right lung in the size of 1x1 cm.
5. There were two cuts in the heart and both the chambers were empty.

and opined that above injuries were caused by the sharp and hard object, the cause of death was above injuries, shock & haemorrhage and death was homicidal in nature.

Therefore, in view of the above evidence of the doctor, it is established that the death of Priya alias Vandana was homicidal in nature.

As far as the involvement of accused/appellant in crime in question is concerned, there is no direct or ocular evidence in this case and the whole case rests upon the circumstantial evidence. In order to rest the conviction based on circumstantial evidence, as per the decision of the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220,** the circumstantial evidence must satisfy the following tests:

(i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(ii) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(iii) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

In the present case the prosecution has tried to establish the charge against the accused/appellant on the following circumstances.

1. That, the accused made extrajudicial confession before his father Shivshankar (PW-1) , brother Vikas (PW-2) and sister Madhuri (PW-9).
2. That, in the fateful night accused and deceased were in their room and a false explanation has been given by the accused.
3. That, the weapon of offence was seized from the accused.

1st circumstance:

As far as this circumstance is concerned, being the father, brother and sister of accused/appellant, all three witnesses have

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

turned hostile and they have not supported the case of the prosecution that the accused made extrajudicial confession before them.

2nd Circumstance:-

As far as this circumstance is concerned, as per statement of accused under Section 313 of Cr.P.C., in the fateful night he was not at the residence, as he took a party in his Maruti Van Taxi to Bilaspur and when on the next day morning he returned, he saw his wife Priya in the injured & dead condition. Shivshanker (PW-1), father of accused, has stated that he is residing in the 2nd floor of the house, in the morning of 16.1.1999 at about 5.30 a.m. he woke up, when he was going to bathroom he asked his children to wake up. When he called the accused Praveen, he came down, but his wife did not come down. Priya used to wake up about 6 to 6.30 a.m. daily and as she did not come down, therefore, he along with his son Vijay & daughter Madhuri went to the room of his daughter-in-law to know as what has happened. On reaching there he saw that Priya was lying on her bed in a pool of blood, he became frightened and the family members have started crying. He asked his son Vikas to report the matter to the Police. Other family members i.e. Vikas (PW-2), Madhuri (PW-9) & Jitendra (PW-10) have not supported the prosecution case in this respect and they have not stated anything about the presence of the accused. However, PW-11

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

8

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Smt. Kamal Banjare, mother of accused, has stated that in the night of 15.1.1999 they went for sleep after taking dinner. Her son Praveen woke up and started crying, therefore, she woke up her daughter Madhuri, informed her that accused is weeping and asked her to go up and see what has happened. Madhuri came out from her room and thereafter everybody started shouting that theft has been committed. She did not go upstairs.

PW-1, Shivshankar, father of accused, even though he has been turned hostile to the extent that the accused has not made extrajudicial confession before him, but he has categorically stated that in the morning of 16.1.1999 he woke up and when asked the other family members to wake up, the accused came down from his room. This witness has not stated that the accused was weeping and none of the family members have stated that the accused was not present in the house in the fateful night, on the contrary, PW-1 Shivshankar has categorically stated that the accused was present in the room with his wife Priya alias Vandana (since deceased). Therefore, there was no reason before the court below to disbelieve the evidence of PW-1, father of accused. Even in the cross-examination nothing has been elicited to show that the accused was not at the residence. PW-1 has stated in Para-10 of his cross-examination that they purchased a Maruti Van for being run as taxi by the accused and in the fateful night when the accused came

P.T.O.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

back along with taxi he does not know. But from his evidence in the examination-in-chief as also in Para 6 of cross-examination, it is clear that accused used to reside along with his wife in their room and in the fateful night accused was in his room along with his wife.

As such, from the above evidence, it is established that in the fateful night the accused was in his room along with his wife Priya alias Vandana and the explanation given by the accused that in the fateful night he was not at his residence is false because his father has categorically stated that the accused was in the room with his wife Priya. The defence of the accused that theft was committed and golden ornaments of the deceased were stolen and in that process offence was committed is also a false defence developed by the accused, for the reason, that in the first instance, the father of accused has stated that in the fateful night the accused was in the room with his wife. Moreover, in the F.I.R. (Ex.P-5), which was lodged by Vikas, brother of accused, on being asked by his father Shivshankar (PW-1). The theory of theft of golden ornaments has not been narrated, on the contrary, in the FIR it has been mentioned that as the car of Praveen met with the accident, therefore, he stopped working and his wife Priya used to ask him to do some work, on account of which he used to remain in tension and on the fateful day about 6.30 a.m. he came down with Katari (dagger) in his hand and stated that he has committed murder of

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his wife Priya, as she has not woke up. Moreover, one silver anklet, one golden locket (Mangalsutra) were taken into possession from the body of deceased Priya alias Vandana under Ex.P-12. Therefore, the defence of the accused that somebody has committed theft of golden ornaments of deceased and in that process he committed murder of Priya alias Vandana is also a false defence developed by the defence.

As per provisions of Section 106 of the Evidence Act the burden lies on the person when any fact is specially within the knowledge of any person, the burden of proving that fact is upon him. Therefore, the burden was on the accused to explain the circumstances under which Priya alias Vandana sustained fatal injuries, as in the fateful night the accused was with his wife in the room and without explaining the circumstances under which Priya alias Vandana sustained injuries, the accused took a false defence, as such, this is an additional circumstance to connect the accused with the crime in question. In the matter of **State of Rajasthan Vs. Kashi Ram** reported in **2006 AIR SCW 5768** the Hon'ble Apex Court held that "*when the facts are within his special knowledge and since respondent failed to do so, it must be held that he failed to discharge the burden cast upon him under S. 106 of the Evidence Act. This circumstance, therefore, provides the missing link in the chain of circumstances which prove his guilt beyond reasonable doubt*".

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3rd Circumstance:-

As far as this circumstance is concerned, the Investigating Officer Shri V.K. Pandey (PW-16) has stated that Katari (dagger) in question was seized from the hand of accused under Ex.P-6, the same thing has been mentioned in the Ex.P-6, but Santosh Kumar (PW-6), who is the neighbour of accused and witness to the recovery memo Ex.P-6, has stated that Katari (dagger) was lying on the place of occurrence from where it was seized under Ex.P-6. Therefore, the prosecution has not been able to establish that the Katari (dagger) in question was seized from the hand of accused and in fact, it was seized from the place of occurrence.

The above circumstances that in the fateful night, the accused and the deceased were in the room where the offence was committed and that accused did not offer any reasonable explanation that in what circumstances the offence was committed, on the contrary, he gave a false explanation that in the fateful night he was not at the residence, he returned in the morning of 16.1.1999 and further a false explanation that a theft was committed in the room of Priya alias Vandana, all her golden ornaments were stolen and in that process somebody has committed her murder. Accordingly, the chain of circumstances is complete and from the above circumstances an irresistible conclusion

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

can be arrived at that the accused was the author of crime in question and there was no possibility of coming any person in between to commit murder of Priya alias Vandana.

For the foregoing reasons, we are of the considered opinion that there is no illegality or infirmity in the judgment of trial court convicting and sentencing the accused for commission of murder of Priya alias Vandana.

In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge